



ENVIRONMENTAL PROTECTION AGENCY

California State Nonroad Engine Pollution Control Standards; In-Use Heavy-Duty Vehicles (As Applicable to Yard Trucks and Two-Engine Sweepers); Opportunity for Public Hearing and Comment

[FRL 9716-9]

AGENCY: Environmental Protection Agency (EPA)

ACTION: Notice of Opportunity for Public Hearing and Comment

SUMMARY: The California Air Resources Board (CARB) has notified EPA that it has adopted and subsequently amended emission standards applicable to yard trucks powered by off-road engines and the auxiliary engines on two-engine sweepers. By letter dated March 2, 2012, CARB submitted a request seeking EPA authorization of these standards under section 209(e) of the Clean Air Act (CAA), 42 U.S.C. 7543(e). This notice announces that EPA has tentatively scheduled a public hearing concerning California's request and that EPA is accepting written comment on the request.

DATES: EPA has tentatively scheduled a public hearing concerning CARB's request on [Insert date 30 days from date of FR publication] beginning at 10:00 a.m. The hearing will be held at 1310 L St, NW, Washington, D.C. 20005. Parties wishing to present oral testimony at the public hearing should provide written notification to David Dickinson at the address noted below.

Should you have further questions regarding the hearing, please contact David Dickinson or you may consult the following website for any updates: <http://www.epa.gov/otaq/cafr.htm>. If EPA does not receive a request for a public hearing, then EPA will not hold a hearing, and instead consider CARB's request based on written submissions to the docket. Any party may submit written comments by [insert date 60 days from date of FR publication].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2012-0335, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
- E-mail: a-and-r-docket@epa.gov.
- Fax: (202) 566-1741.
- Mail: Air and Radiation Docket, Docket ID No. EPA-HQ-OAR-2012-0335, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460. Please include a total of two copies.

• Hand Delivery: EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, N.W., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OAR-2012-0335. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be

automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Parties wishing to present oral testimony at the public hearing should provide written notice to David Dickinson at the address noted below. If EPA receives a request for a public hearing, EPA will hold the public hearing at 1310 L St, N.W., Washington, D.C. 20005 at 10:00 a.m.

FOR FURTHER INFORMATION CONTACT: David Dickinson, Compliance Division (6405J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave, N.W., Washington, D.C. 20460. Telephone: (202) 343-9256, Fax: (202) 343-2804, e-mail address: Dickinson.David@EPA.GOV.

SUPPLEMENTARY INFORMATION:

I. Background and Discussion: Section 209(e)(1) of the Act permanently preempts any State, or political subdivision thereof, from adopting or attempting to enforce any standard or other requirement relating to the control of emissions for certain new nonroad engines or

vehicles.¹ For all other nonroad engines (including any engine that is no longer “new”), States are preempted from adopting and enforcing standards and other requirements relating to the control of emissions, except that section 209(e)(2) of the Act requires EPA to grant California authorization to adopt and enforce such regulations unless EPA makes one of three specifically enumerated findings. In addition, other States with attainment plans may adopt and enforce such regulations if the standards, and implementation and enforcement, are identical to California’s standards. On July 20, 1994, EPA promulgated a rule that sets forth, among other things, regulations providing the criteria, as found in section 209(e)(2), which EPA must consider before granting any California authorization request for new nonroad engine or vehicle emission standards.² EPA revised these regulations in 1997.³ As stated in the preamble to the 1994 rule, EPA has historically interpreted the section 209(e)(2)(iii) “consistency” inquiry to require, at minimum, that California standards and enforcement procedures be consistent with section

¹ States are expressly preempted from adopting or attempting to enforce any standard or other requirement relating to the control of emissions from new nonroad engines which are used in construction equipment or vehicles or used in farm equipment or vehicles and which are smaller than 175 horsepower. Such express preemption under section 209(e)(1) of the Act also applies to new locomotives or new engines used in locomotives.

² 59 FR 36969 (July 20, 1994).

³ See 62 FR 67733 (December 30, 1997). The applicable regulations, now in 40 CFR part 1074, subpart B, § 1074.105, provide:

(a) The Administrator will grant the authorization if California determines that its standards will be, in the aggregate, at least as protective of public health and welfare as otherwise applicable federal standards.

(b) The authorization will not be granted if the Administrator finds that any of the following are true:

(1) California’s determination is arbitrary and capricious.

(2) California does not need such standards to meet compelling and extraordinary conditions.

(3) The California standards and accompanying enforcement procedures are not consistent with section 209 of the Act.

(c) In considering any request from California to authorize the state to adopt or enforce standards or other requirements relating to the control of emissions from new nonroad spark-ignition engines smaller than 50 horsepower, the Administrator will give appropriate consideration to safety factors (including the potential increased risk of burn or fire) associated with compliance with the California standard.

209(a), section 209(e)(1), and section 209(b)(1)(C) (as EPA has interpreted that subsection in the context of section 209(b) motor vehicle waivers).⁴

In order to be consistent with section 209(a), California's nonroad standards and enforcement procedures must not apply to new motor vehicles or new motor vehicle engines. To be consistent with section 209(e)(1), California's nonroad standards and enforcement procedures must not attempt to regulate engine categories that are permanently preempted from state regulation. To determine consistency with section 209(b)(1)(C), EPA typically reviews nonroad authorization requests under the same "consistency" criteria that are applied to motor vehicle waiver requests. Pursuant to section 209(b)(1)(C), the Administrator shall not grant California a motor vehicle waiver if she finds that California "standards and accompanying enforcement procedures are not consistent with section 202(a)" of the Act. Previous decisions granting waivers and authorizations have noted that state standards and enforcement procedures are inconsistent with section 202(a) if: (1) there is inadequate lead time to permit the development of the necessary technology giving appropriate consideration to the cost of compliance within that time, or (2) the federal and state testing procedures impose inconsistent certification requirements.

CARB has submitted to EPA, for authorization, its yard trucks powered by off-road engines and the auxiliary engines on two-engine sweepers provisions from its "Regulation to Reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen and Other Criteria Pollutants from In-Use Heavy-Duty Diesel-Fueled Vehicles" (commonly referred to as the "Truck and Bus Regulation") initially adopted by CARB on December 11, 2008 and subsequently amended on

⁴ See 59 FR 36969 (July 20, 1994).

September 19, 2011.⁵ The Truck and Bus Regulation principally applies to non-new on-road motor vehicles, which is not the subject of this notice. The Truck and Bus Regulation also applies to any nonroad engines used to power yard trucks (which are principally used in off-road agricultural operations) and the auxiliary engine used to power the broom or vacuum functions on two-engine sweepers.⁶

As stated above, EPA is offering the opportunity for a public hearing, and requesting written comments on issues relevant to a full waiver analysis. Specifically, please provide comment on: (a) Whether CARB's determination that its standards, in the aggregate, are at least as protective of public health and welfare as applicable federal standards is arbitrary and capricious, (b) California needs separate standards to meet compelling and extraordinary conditions, and (c) California's standards and accompanying enforcement procedures are consistent with section 209 of the Act.

II. Procedures for Public Participation: If a hearing is held, the Agency will make a verbatim record of the proceedings. Interested parties may arrange with the reporter at the hearing to obtain a copy of the transcript at their own expense. Regardless of whether a public hearing is held, EPA will keep the record open until [Insert date 60 days from date of FR publication]. Upon expiration of the comment period, the Administrator will render a decision on CARB's request based on the record of the public hearing, if any, relevant written submissions, and other information that he deems pertinent.

Persons with comments containing proprietary information must distinguish such information from other comments to the great possible extent and label it as "Confidential

⁵ CARB did not submit the entire Truck and Bus Regulation to EPA for waiver or authorization consideration. The regulation is codified at Title 13, California Code of Regulations, section 2025.

⁶ The definition of yard truck is at section 2025 and two-engine sweeper is defined at 2025(d)(58).

Business Information” (CBI). If a person making comments want EPA to base its decision in part on a submission labeled CBI, then a non-confidential version of the document that summarizes the key data or information should be submitted for the public docket. To ensure that proprietary information in not inadvertently place in the docket, submissions containing such information should be sent directly to the contact person listed above and not to the public docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR Part 2. If no claim of confidentiality accompanies the submission when EPA receives it, EPA will make it available to the public without further notice to the person making comments.

Dated: August 9, 2012

Margo Tsirigotis Oge, Director
Office of Transportation and Air Quality
Office of Air and Radiation

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